

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

MOTION

NIGHT BOX

- ~~OCT 12 2001~~

- Plead guilty to all three counts.**

- cat/div B/F T L
Case # 01-7595
Judge DTK4 Mag CHS
Motn lfp NO Fee pd \$ N/A
Receipt #

48

9. If you did appeal, answer the following: **N/A**

(a) Name of court _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information: **N/A**

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? **N/A**

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information: **N/A**

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? N/A

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion? N/A

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: WHETHER THE APPELLANT RECEIVED ADEQUATE ASSISTANCE OF

COUNSEL WHEN COUNSEL FAILED TO RAISE COMPETENCY ISSUE FOR APPELLANT

Supporting FACTS (state *briefly* without citing cases or law): THE APPELLANT ASSERTS THAT

COUNSEL FAILED TO RAISE THE ISSUE OF THE APPELLANT'S COMPETENCY EVEN

AFTER BEING INFORMED THAT THE APPELLANT HAD SUFFERED FROM MENTAL

DISABILITIES IN THE PAST. APPELLANT RAISED ISSUE WITH COUNSEL PRIOR TO

HIS BEING SENTENCED, AND COUNSEL STATED, " THAT HE DOESN'T WANT TO

WASTE HIS TIME". APPELLANT ASSERTS THAT THIS DENIED HIM EFFECTIVE ASSISTANCE.

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: THERE HAS BEEN NO PREVIOUS CHALLENGES FILED IN

THIS CASE.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing HOWARD J. SCHUMACHER 500 East Broward Boulevard Suite 1800

FORT LAUDERDALE, FLORIDA 33394

(b) At arraignment and plea SAME AS ABOVE

(c) At trial NO TRIAL IN THIS CASE

(d) At sentencing SAME AS ABOVE

(e) On appeal NO DIRECT APPEAL WAS FILED

(f) In any post-conviction proceeding PROCEEDING PRO SE

(g) On appeal from any adverse ruling in a post-conviction proceeding NONE FILED

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

10-10-01
(Date)

Joseph Felp
Signature of Movant

ATTACHMENTS TO GROUNDS

GROUND ONE:

COUNSEL THEN AVOIDED THE APPELLANT AND DIDN'T RESPOND TO APPELLANT'S CALLS AND AFTER FINALLY GETTING LETTER, COUNSEL THEN RESPONDS, BUT BY NOW IT'S ONE_WEEK AWAY FROM THE APPELLANT IS DUE TO BE SENTENCED. APPELLANT RAISED THE ISSUE SEVERAL TIMES AND COUNSEL FAILED TO PROPERLY EVALUATE WHETHER OR NOT APPELLANT HAS A MENTAL DISORDER.

FURTHER, THIS IS EVEN IN THE APPELLANT'S P.S.I. REPORT (SEE PAGE 21 @ 83-84), WHERE IT STATES THAT THE APPELLANT DOES HAVE A HISTORY OF DEPRESSION AND "PSYCHOTIC FEATURES", THEREFORE, COUNSEL KNEW OF THIS ISSUE AND WAS OBLIGATED TO APPELLANT TO EXAMINE ALL METHODS OF DEFENSE ON APPELLANT'S BEHALF.

APPELLANT CLAIMS THAT THE REPRESENTATION OF COUNSEL FELL BELOW THE STANDARDS REQUIRED PURSUANT TO THE APPELLANT'S CONSTITUTIONAL RIGHTS, CONST. AMEND IV.